

The JS 44 civil cover sheet and the information contained therein neither replace nor supplement the filing and service of process or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

PACIFIC GAS AND ELECTRIC COMPANY

DEFENDANTS

THOMAS KNOWLES and THOMAS J. CULLEN

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

SUSAN T. KUMAGAI, ESQ. (State Bar No. 127667)
LAFAYETTE & KUMAGAI LLP
100 Spear Street, Suite 600, San Francisco, California 94105
Telephone: (415) 357-4600, Facsimile: (415) 357-4605

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

DANIEL B. BECK, ESQ. (SBN 63865)
BECK LAW, P.C.
2681 Cleveland Avenue, Santa Rosa, California 95403
Tel: (707) 576-7175, Fax: (707) 576-187

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY— <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R. R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
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V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Section 301 of the Labor Management Relations Act

Brief description of cause:

Petition to Vacate Arbitration Award

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE". Knowles/Hicks v. PGE and IBEW, Case No. C07-2284-CW

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE

2/29/08

SIGNATURE OF ATTORNEY OF RECORD

Susan T. Kumagai

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(c) Attorney's (Firm Name, Address, and Telephone Number) SUSAN T. KUMAGAI, ESQ. (State Bar No. 127667) LAFAYETTE & KUMAGAI LLP 100 Spear Street, Suite 600, San Francisco, California 94105 Telephone: (415) 357-4600, Facsimile: (415) 357-4605	Attorneys (If Known) DANIEL B. BECK, ESQ. (SBN 63865) BECK LAW, P.C. 2681 Cleveland Avenue, Santa Rosa, California 95403 Tel: (707) 576-7175, Fax: (707) 576-187

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V. ORIGIN (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened	Transferred from <input type="checkbox"/> 5 another district (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation Appeal to District <input type="checkbox"/> 7 Judge from Magistrate Judgment
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VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Section 301 of the Labor Management Relations Act Brief description of cause: Petition to Vacate Arbitration Award
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". Knowles/Hicks v. PGE and IBEW, Case No. C07-2284-CW
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IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE
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DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

LAFAYETTE & KUMAGAI LLP
GARY T. LAFAYETTE (State Bar No. 088666)
SUSAN T. KUMAGAI (State Bar No. 127667)
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dprc@pge.com

Attorneys for Petitioner
PACIFIC GAS AND ELECTRIC COMPANY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV 08

1211

In the matter of the Arbitration between

Case No.

TEH

PACIFIC GAS AND ELECTRIC
COMPANY,

Petitioner,

And

THOMAS KNOWLES and THOMAS
HICKS,

Respondents.

**PACIFIC GAS AND ELECTRIC
COMPANY'S PETITION TO VACATE
ARBITRATOR'S INTERIM AWARD
AND REQUEST FOR STAY OF
ARBITRATION PROCEEDING**

Petitioner Pacific Gas and Electric Company ("Petitioner" or "PG&E") respectfully requests an order vacating an interim arbitration award issued by Norman Brand of the American Arbitration Association. The underlying arbitration was initiated by Respondents Thomas Knowles ("Knowles") and Thomas Hicks ("Hicks") (collectively "Respondents"). The ground

1 for vacating the Interim Award is that the Arbitrator acted in manifest disregard of the law when
2 he found that Respondents' state law claims for alleged breach of oral agreement and violation of
3 the covenant of good faith and fair dealing are arbitrable and not preempted under Section 301 of
4 the Labor Management Relations Act., 29 U.S.C. §§185 *et seq.* ("LMRA").

5 Petitioner seeks to vacate the Interim Award pursuant to the Federal Arbitration Act, 9
6 U.S.C. §§10 *et seq.* and a stay of the arbitration proceedings pending the motion to vacate the
7 Interim Award.

8 Petitioner respectfully alleges as follows:

9 **PARTIES**

10 1. Petitioner PG&E is a regulated utility that provides gas and electric power to
11 Northern and Central California. PG&E is a California corporation with its principal place of
12 business in San Francisco, California.

13 2. Respondents Knowles and Hicks are former PG&E employees. They were
14 employed as Fleet Maintenance Mechanics and were members of a bargaining unit represented
15 by the Local Union Number 1245 of the International Brotherhood of Electrical Workers
16 ("IBEW"). While employed by PG&E, Knowles and Hicks' employment was governed by the
17 terms of an agreement between Pacific Gas and Electric Company and the IBEW ("the CBA").

18 **JURISDICTION**

19 3. This Court has jurisdiction to adjudicate this petition pursuant to the Federal
20 Arbitration Act, 9 U.S.C. §10(a), because this matter presents a federal question as to the
21 interpretation and applicability of the doctrine of claim preemption under Section 301 of the
22 LMRA.

23 **INTRADISTRICT ASSIGNMENT**

24 4. This Court is the proper court for this matter because the events giving rise to this
25 petition, specifically, the entry of the Arbitrator's Interim Award, occurred in San Francisco,
26 California.

THE SEVERANCE AGREEMENTS

5. On or about July 6, 2001, PG&E and Knowles entered into a written Severance Agreement and Release regarding Knowles' employment with PG&E and separation therefrom. Among other things, Knowles agreed to release PG&E from any claims, rights or privileges that he may have had relating to his employment with PG&E in exchange for valuable consideration, including a cash payment of \$58,183.24 to Knowles. A true and correct copy of this Severance Agreement and Release (hereafter referred to as "Knowles' Severance Agreement and Release") is hereto attached as Exhibit A and incorporated as if set forth herein by reference.

6. On or about July 2, 2001, PG&E and Hicks entered into a written Severance Agreement and Release regarding Hicks' employment with PG&E and separation therefrom. Among other things, Hicks agreed to release PG&E from any claims, rights or privileges that he may have had relating to his employment with PG&E in exchange for valuable consideration, including a cash payment of \$67,520.59 to Hicks. A true and correct copy of this Severance Agreement and Release (hereafter referred to as "Hicks' Severance Agreement and Release") is hereto attached as Exhibit B and incorporated as if set forth herein by reference.

7. The Knowles' Severance Agreement and Release and the Hicks' Severance Agreement and Release (collectively referred to as "the Severance Agreements") both involve commerce because materials generated during Respondents' employment were used in commerce and PG&E was engaged in activities that affected commerce.

8. Under the Severance Agreements, Knowles and Hicks each agreed to hold PG&E harmless from actions, causes of action and claims relating to his employment with PG&E including those arising under federal, state or local laws relating to employment discrimination based on age, contract or tort. (Severance Agreements, ¶ 4) Further, Knowles and Hicks understood the release extended to all claims whatsoever, known or unknown, under section 1542 of the California Civil Code. (Severance Agreements, ¶ 5)

9. In Paragraph 6 of the Severance Agreements, Knowles and Hicks each promised "not to initiate, participate or aid, in any way, in any lawsuit or proceeding upon any claim released by him/her under this Severance Agreement and Release." They agreed that a violation

1 of this paragraph constituted a material breach of the Severance Agreements. (Severance
2 Agreements, ¶ 6)

3 10. In Paragraph 11 of the Severance Agreements, Knowles and Hicks agreed that
4 “[a]ny dispute regarding any aspect of this Severance Agreement and Release, including its
5 validity, interpretation, or any action which would constitute a violation of this Severance
6 Agreement and Release (hereinafter referred to as an ‘arbitrable dispute’) shall be resolved by an
7 experienced arbitrator”

8 11. In Paragraph 15 of the Severance Agreements, Knowles and Hicks agreed that the
9 Severance Agreements fully superseded any and all prior agreements and understandings, and
10 that any future agreements had to be contained in a writing executed by an authorized PG&E
11 official. In Paragraph 16, Knowles and Hicks agreed that they understood the terms of the
12 Severance Agreements, had been advised to seek legal counsel of their choosing, and that the
13 only agreements made are those contained in the Severance Agreements. (Severance Agreements
14 ¶¶ 15-16) Finally, Knowles and Hicks were warned as follows: “PLEASE READ
15 CAREFULLY. THIS SEVERANCE AGREEMENT AND RELEASE INCLUDES A
16 RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.” (Severance Agreements, Pg. 5)

17 THE PRIOR CIVIL ACTIONS

18 12. On or about August 23, 2006, Knowles and Hicks filed a civil lawsuit against
19 PG&E in the Superior Court for the State of California alleging breach of the Severance
20 Agreements (“the first civil action”). PG&E removed the first civil action to this Court and, on
21 or about October 30, 2006, Knowles and Hicks voluntarily dismissed the first civil action.

22 13. On or about April 26, 2007, Knowles and Hicks initiated a second civil action
23 against PG&E in this Court entitled *Thomas Knowles and Thomas Hicks v. Pacific Gas And*
24 *Electric Company, Deanna Radford, and Does 1-20*, Action No. C 07-2284, claiming breach of
25 contract, breach of the covenant of good faith and fair dealing, and age discrimination (“the
26 second civil action”). Knowles and Hicks sought damages for alleged denial of re-employment
27
28

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benefits in the second civil action. The claims asserted in Knowles and Hicks' second civil action are identical to the claims asserted in the arbitration which is the subject of this Petition.¹

14. Knowles and Hicks' attempt to assert the identical claims and recover the identical relief in two forums (private arbitration and civil litigation) violates the primary right doctrine.

15. On or about July 30, 2007, PG&E filed a motion to dismiss the second civil action filed by Knowles and Hicks. On November 29, 2007, the Court granted PG&E's motion to dismiss because it determined that Respondents' claims were preempted by Section 301 of the LMRA. The Court accorded Respondents leave to amend to allege viable claims under the LMRA, if possible. A true and correct copy of the Court's Order Granting Defendant PG&E's Motion to Dismiss with Leave to Amend is hereto attached as Exhibit C and incorporated as if set forth herein by reference.

16. On or about December 5, 2007, Knowles and Hicks filed an Amended Complaint in the second civil action.

17. On or about December 26, 2007, PG&E filed a Motion to Dismiss the Amended Complaint in the second civil action.

18. PG&E's motion to dismiss the Amended Complaint in the second civil action will be heard on March 6, 2008.

CHALLENGED ARBITRATION AWARD

19. On or about January 12, 2007 (after filing and voluntarily dismissing the first civil action and before filing the second civil action), Respondents filed demands for arbitration with the American Arbitration Association alleging breach of written contract, specifically denial of alleged "promised employment benefits and preferential rights to re-employment" and age discrimination. Respondents later, on March 21, 2007, alleged the promise for preferential re-hire rights was made orally, therefore, their claim included breach of an oral agreement.

20. PG&E filed a motion to dismiss the arbitration on June 8, 2007, based upon, among other grounds, preemption under Section 301 of the LMRA. PG&E also claimed the

¹ Petitioner is filing an Administrative Motion to Relate Cases pursuant to Local Rule 3-12(b) concurrently herewith.

1 written contract did not provide a basis for arbitration. Respondents opposed the motion.
 2 Arbitrator Norman Brand of the American Arbitration Association (the "Arbitrator") held a
 3 hearing on August 14, 2007, in the City and County of San Francisco, State of California, which
 4 is within the district in which this Court sits, at which both parties appeared and provided
 5 argument and evidence on PG&E's motion to dismiss.

6 21. At the hearing on PG&E's motion to dismiss, the Arbitrator requested that the
 7 parties provide supplemental briefing on the issue of whether preemption under Section 301 of
 8 the LMRA applied to the arbitration. Both parties provided supplemental briefing.

9 22. On December 3, 2007, in San Francisco, California, the Arbitrator made an
 10 Interim Award, in writing, granting in part and denying in part PG&E's motion to dismiss (the
 11 "Interim Award"). The Arbitrator's Interim Award was delivered to the parties. (A true and
 12 correct copy of the Interim Award is hereto attached as Exhibit D and incorporated as if set forth
 13 herein by reference.)

14 23. In making the Interim Award, the Arbitrator exceeded his powers and acted in
 15 manifest disregard of the law by finding that Respondents' claim for breach of an alleged oral
 16 promise of re-employment rights – a right that exists only under the CBA – and a companion
 17 claim for violation of the implied covenant of good faith and fair dealing could be arbitrated
 18 because the claim "does not assert any right allegedly created by" the CBA (Arbitration Award,
 19 Pg. 7) and "does not require [the arbitrator] to interpret the CBA." (Arbitration Award, Pg. 9)
 20 The Arbitrator recognized that any claim requiring interpretation of the CBA is preempted under
 21 Section 301 of the LMRA as demonstrated by his request for additional briefing on Section 301
 22 preemption and his finding that Respondents "cannot arbitrate their rights under the CBA in this
 23 arbitration." (Arbitration Award, Pg. 9) The Arbitrator disregarded Section 301, however, in
 24 concluding that "there does not appear to be any basis for applying Section 301 to preemption to
 25 prevent arbitration of this claim." (Arbitration Award, Pg. 9)

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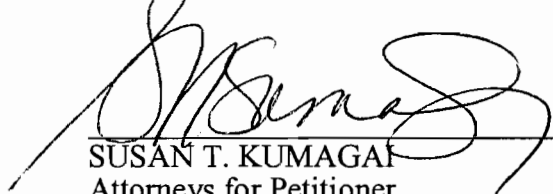
1 Further, the Arbitrator erred in finding that the parties agreed to litigate a claim for breach
2 of an oral contract. No written agreement exists or has ever been presented that demonstrates a
3 mutual understanding that the parties would accept arbitration of a claim for breach of an oral
4 contract.

5 WHEREFORE, Petitioner moves the Court for:

- 6 1. An order staying all arbitration proceedings pending the civil action;
- 7 2. An order vacating the Interim Arbitration award to the extent it denied Petitioner's
8 Motion to Dismiss;
- 9 3. Costs of suit and attorney fees; and
- 10 4. Such other relief as the Court may see fit to grant.

11
12 Dated: February 27, 2008

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PACIFIC GAS AND ELECTRIC COMPANY

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